# SUPREME COURT OF THE UNITED STATES.

No. ~~482~~. 246

THE UNITED STATES, PLAINTIFFS,

vs.

JAMES D. PORTER.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE.

FILED JANUARY 4, 1871.

Dec. 1871

1 UNITED STATES OF AMERICA:

Be it remembered that the circuit court of the United States for the district of West Tennessee, was begun and held at the federal court-rooms in the city of Memphis, on the fourth Monday in, it being the 28th day of, November, A. D. 1870, being the time and place designated by law for the holding said court.

Present and presiding, the Hon. H. H. Emmons, judge of the United States circuit court for the sixth circuit thereof; and the Hon. Connally F. Trigg, United States district judge for the districts of Tennessee; present also, A. S. Mitchell, clerk.

And on Thursday, December the 22nd, A. D. 1870, the same being one of the days of said term, the following proceedings were had and entered of record in said court, to wit:

THE UNITED STATES
*vs.*
JAMES D. PORTER. } No. 1025. Quo warranto.

*State of the pleadings.*

2 This is an information of quo warranto, brought by H. E. Hudson, U. S. att'y for the western district of Tennessee, for and on behalf of the United States, in pursuance of the act of Congress, approved May 31st, 1870, entitled an "Act to enforce the rights of citizens of the United States to vote in the several States of the Union, and for other purposes," against the defendant James D. Porter, who, as alleged, holds the office of judge of the circuit court in and for the county of Henry and other counties, composing the 12th judicial circuit, in and for the State of Tennessee, western district of Tennessee, contrary to the provisions of sec. 3, of the fourteenth article of amendment to the Constitution of the United States.

Said information alleges substantially as follows:

That the said James D. Porter, for the space of ten days now last past, without any legal grant, warrant, or right whatsoever, has used and exercised, and still doth use and exercise the office of judge of the 12th judicial circuit, comprising the county of Henry and other counties, in and for the State of Tennessee, district of Western Tennessee,

3 and for and during all the time last above mentioned, without any legal grant, warrant, or right, hath claimed and still claims to be said judge, and to use and enjoy the privileges and franchises appertaining to the same; that the said James D. Porter, before the taking and using of the office aforesaid, heretofore, to wit, on the 15th day of October, 1859, took an oath as a certain legislative officer, to wit, as a member of the house of representatives of the State of Tennessee, to support the Constitution of the United States; that thereafter, and before taking and using the office first above mentioned, to wit, on the first day of January, 1862, he, the said James D. Porter, voluntarily gave aid and comfort to persons then in rebellion and insurrection against the United States, and did then voluntarily join said armed persons, and arm himself and wage and carry on rebellion and insurrection against the United States.

To which said information defendant pleads substantially, as follows:

First. That it is true he holds and has held said office during
4 the time stated in said information; that on the 4th day of August, 1870, he was duly elected to said office under and by virtue of the laws and constitution of the State of Tennessee, for the term of six years, and that he was then duly commissioned and installed into office in accordance with the laws and constitution of the State of Tennessee.

Second. That before the filing of said information against him, and before the adoption of sec. 3 of the said fourteenth article of amendment to the Constitution of the United States, and before the passage of the said act of May 31, 1870, to wit, on the 29th day of May, 1865, the President of the United States did issue and make his proclamation whereby he, the said President, did grant to all persons who had directly or indirectly participate' in the then existing rebellion—except certain classes of persons excepted from the benefits of said proclamation, amnesty, and pardon, with restoration of all rights of property—except as to slaves, and except in cases where legal proceedings, under
5 the laws of the United States, providing for confiscation of the property of persons engaged in rebellion had been instituted—nevertheless and upon condition that every such person should take and subscribe an oath, as follows, and thenceforward keep and maintain the same inviolate, to wit, that he would thereafter faithfully defend the Constitution of the United States and the Union of the States thereunder, and in like manner abide by and faithfully support all laws and proclamations made during the then existing rebellion with reference to the emancipation of slaves. That he, the said defendant, afterwards, to wit, on the 5th day of September, 1865, and before the filing of said information, and before the adoption of said sec. 3 of the 14th amendment to the Constitution of the United States, and before the passage of the said act of May 31st, 1870, accepted said pardon, and took and subscribed the said oath, and has thenceforward kept and maintained the said oath inviolate, that he is not embraced or included in any of the classes of persons excepted from the benefits of the said proclamation.

6 To which pleas the plaintiff demurs, and the defendant joins in demurrer.

This cause coming on to be argued at this term, it occurred as a question, whether the executive pardon granted and accepted, as stated in defendant's plea, is a legal defense for the defendant against the operation of the 3d section of the 14th article of amendment to the Constitution, and said 14 sec. of said act of May 31st, 1870.

On which questions the opinions of the judges were opposed.

Whereupon, on a motion of plaintiff, the said United States, by H. E. Hudson, att'y as aforesaid, that the points on which the disagreement hath happened, may, during the term, be stated under the direction of the judges, and certified under the seal of the court to the Supreme Court to be finally decided—

It is ordered that the foregoing state of the pleadings, and the facts stated therein, which are made under the direction of the judges, be certified according to the request of the plaintiff, by the said H. E. Hudson, att'y, and the law in such cases made and provided.

7 UNITED STATES OF AMERICA,
*District of West Tennessee:*

I, Abram S. Mitchell, clerk of the United States circuit court for the distrect of West Tennessee, do hereby certify that the foregoing six pages contain a full and true copy of the proceedings of said court on the division of opinion of the judges thereof in the cause therein stated.

Witness my hand and the seal of said circuit court this 28 day of December, A. D. 1870, and of the independence of the United States the 95th year.

[SEAL.] A. S. MITCHELL, *Clerk.*

(Indorsement on cover:) No. 462. The United States, plaintiffs, vs. James D. Porter. Certificate of division. W. Tennessee, C. C. U. S. Filed 4th Januury, 1871.

# SUPREME COURT OF THE UNITED STATES.

No. ~~463.~~ 247

THE UNITED STATES, PLAINTIFFS,

vs.

W. S. SCOTT.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE.

**FILED JANUARY 4, 1871.**

Dec. (8)1

1 UNITED STATES OF AMERICA:

Be it remembered that the circuit court of the United States for the district of West Tennessee was begun & held at the federal court-rooms, in the city of Memphis, on the fourth Monday in, it being the 28th day of, November, A. D. 1870, being the time and place designated by law for the holding said court.

Present and presiding, the Hon. H. H. Emmons, judge of the United States circuit court for the sixth circuit thereof; and the Hon. Connally F. Trigg, United States district judge for the districts of Tennessee; present also, A. L. Mitchell, clerk.

And on Wednesday, the 21st day of December, A. D. 1870, the same being one of the days of said term, the following proceedings were had and entered of record in said court, to wit:

THE UNITED STATES
*vs.*
W. S. SCOTT. } No. 1075. Quo warranto.

*State of the pleadings.*

This is an information of quo warranto brought by H. E. Hud-
2 son, U. S. att'y for the district of West Tennessee for & on behalf of the United States in pursuance of the act of Congress, approved May 31, 1870, entitled "An act to enforce the right of citizens of the United States to vote in the several States of this Union, and for other purposes," against the defendant W. S. Scott, who, as alleged, holds the office of tax collector of Obion County, State of Tennessee, western district of Tennessee, contrary to the provisions of sec. 3 of the 14th article of amendment to the Constitution of the United States.

Said information alleges substantially as follows: That said W. S. Scott for the space of ten days now last past, without any legal grant, warrant, or right whatsoever, hath used and exercised, and still doth use and exercise, the office of tax collector in and for said county of Obion, State of Tennessee, western district of Tennessee, and for and during all the time last above mentioned, without any legal grant, warrant, or right, hath claimed, and still claims, to be said tax collector, and to use and enjoy the privileges & franchises appertaining to
3 the same; that he, the said W. S. Scott, before the taking and using of the office aforesaid, heretofore, to wit, on the first day of June, 1860, took an oath as a certain executive officer, to wit, as sheriff of the county of Obion, State of Tennessee, to support the Constitution of the United States; that thereafter and before the taking and using the office first above mentioned, to wit, on the first day of January, 1862, he, the said W. S. Scott, voluntarily gave aid & comfort to persons then in rebellion and insurrection against the United States, and did voluntarily join said armed persons, and arm himself, and carry on rebellion & insurrection against the United States.

To which said information defendant demurs, and the plaintiff joins in demurrer.

This cause, coming on to be heard at this term, there occurred as questions—

First. Whether this court can enquire into the authority and tenure by which a State officer holds office.

Second. Whether the office of sheriff, which said defendant held, and in reference to which he took an oath to support the Constitution
4 of the United States, is an office within the sense and meaning of said sec. 3 of said fourteenth article of amendment to the Constitution of the United States, and of the said act of Congress of May 31, 1870.

Third. Whether the office of tax collector is an office within the sense and meaning of said amendments of the Constitution and said laws of the United States.

On which said questions the opinions of the judges were opposed.

Whereupon, on a motion of plaintiffs, the said United States, by H. E. Hudson, attorney as aforesaid, that the points on which the disagreement hath happened may, during the term, be stated under the direction of the judges, and certified under the seal of the court to the Supreme Court, to be finally decided, it is ordered that the foregoing state of the pleadings, & the facts stated therein, which are made under the directions of the judges, be certified according to the request of the plaintiffs, by said H. E. Hudson, att'y, and the law in such cases made and provided.

5 UNITED STATES OF AMERICA,
*District of West Tennessee:*

I, Abram S. Mitchell, clerk of the United States circuit court for the district of West Tennessee, do hereby certify that the foregoing four pages contain a full and true copy of the proceedings of said court, on the division of opinion of the judges thereof in the cause therein stated.

Witness my hand and the seal of said circuit court this 27th day of December, A. D. 1870, and of the independence of the United States the 95th year.

[SEAL.] A. S. MITCHELL, *Clerk.*

(Indorsement on cover:) No. 463. The United States, plaintiffs, vs. W. S. Scott. Certificate of division. W. Tennessee, C. C. U. S. Filed 4th January, 1871.